ABSTRACTS OF RECENT ENGLISH CASES.

COMMON LAW.

Attorney, Privilege of.—. Evidence.—An attorney subpœnaed to produce a document at a trial, may, in his discretion, refuse to produce it, on the ground that it has been intrusted to him by a client. He is neither bound to produce it, nor to answer a question with respect to its nature; and the judge ought not to examine it to see whether it is a document which ought to be withheld. An attorney stated that after the execution of a deed which he held for his client, a document was delivered out of his office to the defendant as a copy. The attorney having refused to produce the deed: *Held*, that the document so delivered, was not admissible as secondary evidence of its contents. *Volant* vs. *Soyer and Symons*, 22 Law J. (N. S.) C. B. 83.

Breach of Contract—Loss of Profits—Damage.—In an action by the plaintiffs for the non-fulfilment of a contract by the defendants to finish certain machinery within a reasonable time, it was averred as special damage, that the plaintiffs had thereby been prevented from fulfilling a contract to third parties, and lost the profits thereon: *Held*, that the jury, although not bound to assess the damages at the amount of such profits, yet, that they might do so if satisfied, by reasonable evidence, that the plaintiffs would have obtained such profits but for the breach of contract by the defendants: *Held also*, that such damages were equally recoverable, although the contract which would have produced the profits could not have been enforced at law, because not in compliance with the Statute of Frauds, and although it was made by the three plaintiffs with two of the plaintiffs carrying on a separate business. *Waters and others*, vs. *Towers and another*, 22 Law J. (N. S.) Exch. 186.

Carriers by Railway—Agents—Countermand—A package containing goods, and marked "Scotthorn & Co., to the East India Docks, passenger-ship "Melbourne," Australia," was sent by the plaintiffs to the Great Bridge station of defendants, to be taken to London for hire. By the practice of defendants, goods delivered at that station for London, are conveyed by their line as far as Birmingham, and thence by the London and North-Western Railway Company. Before the goods in question arrived in London, one of the plaintiffs delivered to a clerk at the Euston station

of the London and North-Western Railway Company, a written order that they should be forwarded to Ratcliffe Highway. This order was not complied with. The goods were taken to the "Melbourne," and carried to Australia, and lost to plaintiffs: *Held*, that the plaintiffs were entitled to countermand their original directions; that the clerk at Euston station was an agent of the defendants, with authority to receive the countermand; and that the defendants were therefore liable for the loss occasioned by non-compliance with the countermand. *Scotthorn and another* vs. *South Staffordshire Railway Company*, 22 Law J. (N. S.) Exch. 121.

Contract of Sale.—No action can be maintained for the breach of an executory contract for the sale of a ship, unless the contract be by an instrument in writing, containing a recital of the certificate of registry. *Duncan* vs. *Tindal*, 22 Law J. (N. S.) C. B. 137.

Ferry—Negligence—Carriage of Horse, Owner's control.—The defendants, lessees of a ferry over a river, ran steamboats across for the conveyance of passengers and goods for hire; they also carried animals; but it was not their practice to take charge of the animals when on board. The plaintiff having paid the usual fare, led his mare on board on one side of the river, and remained with her until the steamboat reached the other side. For landing the passengers and animals, the defendants had provided a moveable slip, leading from the boat to a landing barge. The slip had a hand-rail, which had been twice recently, to the defendants' knowledge, broken by the pressure of a horse on landing; and in the hand-rail was an iron spike, which appeared whenever the rail gave way. The defendant had also been cautioned that the slip was unsafe. They, notwithstanding, continued to use the slip, leaving the broken rail slightly tied up, so that it appeared sound. Over this slip the plaintiff proceeded to lead his mare towards the shore, but the mare pressed against the rail, the latter giving way, and the iron spike concealed in it injured her severely: *Held*, that the defendants, as ferrymen, were bound to provide proper means for the embarkation and landing of the animals they carried for hire, and that, although the mare was under the control and management of the plaintiff, they were liable for the injury to her in consequence of their culpable negligence in allowing an improper slip to be used. *Willoughby and another, appellants; Horridge, respondent*, 22 Law J. (N. S.) C. B. 90.

Fixtures—Incoming Tenant—Reversioner.—Trustees, seised under a devise in fee of a farm, leased to defendant, one of themselves, for a term,

and afterwards, in the character of trustees only, conveyed the land to plaintiff in fee, with all fixtures: *Held*, that defendant being a party to the conveyance, could not, after the conveyance, under the general law or custom of the country, remove, at the expiration of his term, farm-machinery annexed to the land; and that he was therefore liable to plaintiff, who had demised to M., in case for injury to the reversion, for removing staddles built into the land for the purpose of supporting ricks, and a thrashing-machine attached by bolts and screws to pillars fixed in the land, assuming that he might have removed them if they had been placed there by himself, and he had not joined in the conveyance. That a granary, resting by its mere weight on staddles built into the land, was a chattel, and would not be a fixture, in the ordinary sense of the word, though it might pass by that word, if, from the rest of the conveyance an intention appeared of comprehending farm-machinery in general. But that, even then, plaintiff could recover against defendant for carrying it away, either as an injury to the reversion in the land, the chattel not being part of such reversion, or in trover, M. being entitled to the exclusive use of the chattel. *Wiltshear* vs. *Cottrell*, 1 Q. B. (Ellis & B.) 674.

Marine Insurance—Injury by stranding—Underwriter's liability.—A ship on her voyage from Nantes to Dublin, was obliged by stress of weather to run into the Bay of Palais, on the coast of France, and there let go the bower anchors and chains. The gale increasing, and the ship dragging the large anchor, the captain, for the preservation of the ship and the lives of all on board, and particularly to prevent the ship going on shore, slipped both chains overboard, got the ship under sail, and succeeded in entering the tidal harbour of Sanzon, where, by reason of its being at the time low water, the ship took the ground, and for a month only floated about eight days, and then only at the top of spring-tides. When, afterwards, the ship proceeded to sea, it was found that she had become strained, and was making water, in consequence of which, her cargo was damaged: *Held*, that the ship was "stranded" in the harbour of Sanzon, within the meaning of the memorandum in a policy of insurance, and the defendant as underwriter was liable in respect of an average loss, occasioned by the damage to the cargo. *Corcoran* vs. *Gurney*, 22 Law J. (N. S.) Q. B 113.

Master and Servant.—.Contractor—Evidence of Liability—Nuisance.—If A. employs another to do a lawful act, and he, in doing it, commits a public nuisance, A. is not responsible. *Aliter*, if the act to be done

necessarily involves the committing a public nuisance. The defendants contracted with A. to fill in earth over a drain, which was being made for them across a portion of the highway from their house to the common sewer. A., after having filled it in, left the earth so heaped above the level of the highway, as to constitute a public nuisance, whereby the plaintiff in driving along the road sustained personal injury. A few days previous to the accident, and before the work was completed, one of the defendants had seen the earth so heaped over a portion of the drain, but beyond this, there was no evidence that either defendant had interfered with or exercised any control over the work: *Held*, that there was no evidence to go to the jury of the defendants' liability. *Peachy* vs. *Rowland and another*, 22 Law J. (N. S.) C. B. 81.

Master and Servant—Liability.—Where an attorney's clerk had fraudulently simulated the court seal upon a writ of summons, the Court set aside the writ and all proceedings thereon, and ordered the attorney, though blameless personally, to pay the costs. *Dunkley* vs. *Farris*, 11 C. B. 457.

NOTICES OF NEW BOOKS.

A complete Practical Treatise on Criminal Procedure, Pleading and Evidence, in indictable cases; with minute directions and forms for every criminal case that can arise, either at common law, under the English statutes, or under the statutes of the different states; comprising the "New System of Criminal Procedure, Pleading and Evidence," by Mr. Archbold; and also the twelfth and last London Edition of "Archbold's Pleading and Evidence in Criminal Cases," by Messrs. Jervis and Welsby; to which are added comprehensive notes on each particular offence, the accusation and complaint, process, arrest and examination, commitment, bail, indictment, trial, conviction, judgment, appeal, new trial and execution. Also, an Introductory Essay on Crimes and Punishment. By Thomas W. Waterman, Counsellor at Law. Sixth edition, in three volumes. New York. Banks, Gould & Co., 144 Nassau street. Albany: Gould, Banks & Co., 475 Broadway. 1853.

A full, accurate and well digested treatise upon criminal law, as now understood and administered, has for a long time been greatly needed. We have had laid before us three volumes by Mr. Waterman, to which is prefixed the extended title page at the head of this article. After a somewhat careful perusal, we have arrived at the conclusion that the work itself is justly entitled to just such a title page. If so, it hardly needs commendation at our hands. The treatise of Mr. Archbold upon Pleadings and Evidence in Criminal Cases, has been so long and so favorably known to the American bar, that to speak of it in terms of approbation,